IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 418 OF 2007

Naushad Alam Abdul Jabbar Abbasi ..Applicant.
V/s
The State of Maharashtra ..Respondent.

Mr. Waris Pathan, Advocate for the applicant.

Mr. U.V. Nikam, APP for the respondent.

CORAM : J.H. BHATIA, J.

DATE : 14TH FEBRUARY, 2007.

P.C.

. Heard Mr. Warish Pathan learned Counsel for the applicant and Mr. Nikam, learned APP for the State.

2. The applicant seeks to be released on bail in Crime No. 319/2005 registered at Dharavi Police Station for the offence punishable under Section 364A of Indian Penal Code.

3. Prosecution case, in brief, is that on 1/12//2005 at about 6.30 p.m. the first informant Mohammed Jamaluddin Shaikh left his son near his house and went away to see his customers. At that time his son Mohammed Adil, aged about 5 years, was playing near

the house. gave After some time, he came back and found that the boy was missing. In spite of search, the boy could not be found. On next day at about 3.30 P.M. he received a call on his mobile phone to the effect that boy was in custody of the person, who was calling and he demanded amount of Rs. 2.5 lacs to release the boy. After that the complaint was lodged with the police and the offence came to be registered on 2/12/2005. For whole days search was made but the boy could not be found. Again there was a call making demand and the complainant could identify that it was voice of his ex-partner Najrul @ Najroodin. Said Najrul was seen near Cigarette factory along with the boy and one more person on 4/12/2005. It is contended by the prosecution that it was learnt that the suspect Najural was likely to come to meet his friend near the Cigarette factory Andhri (E) on 5/12/2005 and accordingly a trap was arranged. However, at that time, present applicant, who is distant relative of Najrul, come there along with the boy. He was immediately taken in custody. The boy was interrogated, his statement was recorded and thereafter the present applicant came to be arrested by police. After investigation charge-sheet was filed and the accused is in jail since last about 14 months. Trial is

not yet commenced.

4. According to the applicant, he is innocent and he has nothing to-do with the offence. According to him, he has been arrested by the police merely because he happens to be relative of Najrul and because the police could not arrest said Najrul. The applicant has no criminal antecedents and no case has been ever registered against him. According to the prosecution, because main accused is not arrested, it will not be desirable to release the present applicant on bail. It is contended that if bail is granted to him, it will be further difficult to arrest the main accused.

5. I have carefully gone through the police papers. In the F.I.R., as well as the supplementary statement of the complainant, it is clear that ransom amount was demanded by Najrul, who was former partner of the complainant in the embroidery business. It is vaguely contended by the prosecution that Nazrul was seen with the boy, as well as his associate on 4/12/2005 near Cigarette factory and it was learned that he was likely to come at that place on 5/12/2005 again, and accordingly a trap was arranged but instead of Najrul,

present applicant came along with the boy. Learned Counsel for the applicant contended that in fact Najrul had handed over the boy to the accused shortly before his arrest and he himself had taken the boy to the police station and he handed over the boy to the police but instead of searching for the real culprit the police arrested him. The defence of the accused cannot be taken into consideration at this stage. However, record does not reveal that any arrest panchanama of the present applicant was prepared near Cigarette factory or a trap was allegedly arranged and the present applicant was found along with the boy. The arrest panchanama appears to have been prepared at Dharavi Police Station. A statement of the boy was recorded by the investigating officer in a very slip shod manner without any serious attempt to find out, what was the role played by the present applicant. The statement of the boy reveals that he was taken away by Najrul. He was taken around the city in autorickshaw and he was shown many spots in the city by said Najrual. He only stated that the present applicant, who was accompanying the boy had given him eatable on that day. No attempt was made by the investigating officer to find out at what stage the present applicant had come in the association of Najrul

and since when the boy was in actual custody of the present applicant etc. Taking into consideration these circumstances and nature of the investigation, I find that the applicant deserves to be granted bail.

6. For the aforesaid reasons, the applicant be released on bail on his executing P.R. of Rs. 15,000/- with one surety in like amount with conditions that he shall not tamper with the prosecution evidence and shall attend Dharavi Police Station once in a month till the end of trial.

(J.H. BHATIA, J.)